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April 30, 1993

Mr. Richard McAllister  
Assistant Regional Counsel  
U.S. EPA - Region X  
1200 Sixth Ave.  
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Laurie Hauck  
Assistant Regional Counsel  
U.S. EPA - Region X  
1200 Sixth Ave.  
Seattle, WA 98101

Ms. Allison Hiltner  
U.S. EPA - Region X  
1200 Sixth Ave.  
Seattle, WA 98101

Re: Commencement Bay Nearshore/Tideflats CERCLA Site --  
Hylebos Waterway  
Early De Minimis Waste Contributor Settlement

Dear Mr. McAllister, Ms. Hauck and Ms. Hiltner:

This letter serves as a follow up to our earlier letter dated April 16, 1993 concerning a de minimis settlement of CERCLA liability for cleanup of the Hylebos Waterway. The purpose of this letter is to provide you with a revised list of Hylebos Waterway de minimis PRPs, together with additional affidavits.

Enclosed as a revised Tab 1 is an updated list of Hylebos Waterway de minimis PRPs. The list submitted to you on April 16th mistakenly omitted Cenex AG, Inc. as a de minimis PRP. The revised list corrects this omission.

I have also enclosed copies of affidavits from de minimis PRPs that were not included with the material submitted on April 16, 1993. According to my records, you now have affidavits from all of the PRPs listed on the revised Tab 1, except for: Airo Services, Inc.; Jones-Goodell Corporation; PRI Northwest, Inc.; and Shell Oil Company. Each of these PRPs has been asked to prepare an affidavit, and I expect to forward this final group of affidavits within the next 14 days.

USEPA SF



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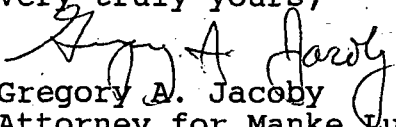
W. A. McGavick

Counsel  
April 30, 1993  
Page - 2

The de minimis PRP group would like to meet with EPA in May to discuss the issues raised in our prior correspondence. We believe that it is never too early to begin settlement discussions.

Please telephone me at 627-1181, so that we can make arrangements to meet.

Very truly yours,

  
Gregory A. Jacoby  
Attorney for Manke Lumber  
Company, Inc.

GAJ:tms  
Enclosures  
cc: Distribution List

m\03580\EPA.ltr

REVISED TAB 1

LIST OF HYLEBOS WATERWAY DE MINIMIS PRPS

Airo Services, Inc.  
AOL Express, Inc.  
Buffelen Woodworking Co.  
Cenex AG, Inc.  
Dunlap Towing Company  
FO Fletcher, Inc.  
Hylebos Marina  
Jones-Goodell Corporation  
Lone Star Northwest  
Manke Lumber Company, Inc.  
McFarland Cascade Holdings, Inc.  
Milgard Manufacturing  
Mintercreek Development  
Modutech Marine, Inc.  
Murray Pacific Corp.  
Department of the Navy  
Nordlund Boat Company, Inc.  
Nordlund Prop.  
PRI Northwest, Inc.  
Shell Oil Company  
Joseph Simon & Sons, Inc.  
Leslie P. Sussman  
City of Tacoma Storm and Sewer Utility  
USG Interiors, Inc.  
Vance Lift Truck, Inc.  
Wasser & Winters, Inc.  
Weyerhaeuser Company

As of April 30, 1993

1  
2  
3 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
4 REGION 10

5 IN THE MATTER OF: )

6 Commencement Bay Nearshore/ )  
7 Tideflats Superfund Site/ )  
8 SEDIMENTS OF HEAD AND MOUTH )  
9 OF THE HYLEBOS WATERWAY, Tacoma, )  
10 Pierce County, Washington )  
11 Proceeding Under Section )  
12 122(g)(4) of the Comprehensive )  
13 Environmental Response, )  
14 Compensation, and Liability )  
15 Act of 1980, as amended, )  
16 42 U.S.C. 9622(g)(4) )

U.S. EPA  
Docket No.

DECLARATION OF DAVID BAKER  
ON BEHALF OF CENEX AG, INC.

13 I, David Baker, make the following voluntary statement:

14 1. I am legal counsel for the CENEX AG, Inc., an identified  
15 Potentially Responsible Person ("PRP") in this matter. I make this  
16 affidavit to the extent of my own knowledge and I am competent to  
17 testify to the matters stated herein.

18 2. I make this affidavit in support of a proposed cash-out  
19 settlement on behalf of minor PRPs and to establish that the problem  
20 chemicals contributed to the Hylebos Waterway by CENEX, if any, are  
21 and were minimal in amount and toxicity relative the contributions of  
22 other PRPs. I further believe the proposed settlement is practicable  
23 and in the public interest and represents a fair allocation of the  
24 costs of cleaning up the waterway.

25 3. CENEX's property is located at 1801 Taylor Way in Tacoma,  
26 Washington, and consists of approximately 8.5 acres at the middle of

1 the Hylebos Waterway next to Buffelen Woodworks. CENEX currently owns  
2 the property and leases a portion of it to Miles Trucking (formerly  
3 Ryder Truck Rental), which operates truck storage, maintenance and  
4 rental businesses at the site. Since April of 1993 CENEX has leased  
5 a portion of the property to Cansiepc Industries, for refrigerated  
6 storage of seafood products. CENEX manufactured animal feed at the  
7 site from 1982 through 1987. Land O'Lakes manufactured animal feed  
8 there as a lessee from 1987 through 1990. Western Farmers Association  
9 manufactured animal feed there from 1946 until 1982. Other lessees  
10 since 1946 include several seafood storage companies.

11 4. To the best of my knowledge, no significant release of  
12 problem chemicals (as defined in the Commencement Bay ROD) to the  
13 Hylebos Waterway has occurred from this property. In the past,  
14 electrical capacitors which may have contained small quantities of  
15 PCBs were placed on the property by local electric utilities. The  
16 utilities removed these during the 1980s and there were no known  
17 releases. A small quantity of zinc accumulated in the oil/water  
18 separator on the property and this was removed periodically by a  
19 contractor.

20 5. Miles Trucking uses small quantities (25 gallons) of  
21 Stoddard Solvent. To the best of my knowledge, no releases to the  
22 Hylebos have occurred involving this substance.

23 6. During the period from 1990 to 1992, seven underground  
24 storage tanks, which had stored petroleum products, were removed from  
25 the site. Contaminated soil associated with these tanks was removed  
26

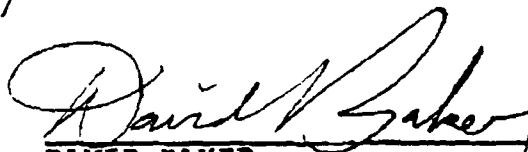
1 and disposed of off-site. Petroleum was not identified as a problem  
2 chemical in the ROD.

3 7. The CENEX property was not mentioned as a source of problem  
4 chemicals in the Record of Decision for the Hylebos Waterway and CENEX  
5 was deleted from the list of potential sources of problem chemicals  
6 (List 1) in the mouth of the Hylebos Milestone I Report issued by the  
7 Washington State Department of Ecology in May of 1992. (The same  
8 report deleted Miles Trucking from the list of probable sources of  
9 problem chemicals (List 2) based on catch basin sampling which showed  
10 the presence of no such chemicals.) The principal undertaking on this  
11 site since 1946 has been the mixing and storage of wholesome animal  
12 feeds.

13 8. The information in this affidavit is correct to the best of  
14 my knowledge and is based on our response to EPA's 104(e) inquiry,  
15 incorporated here by reference, and my review of available files that  
16 were reasonably expected to contain information about the property.

17 I declare, under the penalties of perjury under the laws of the  
18 State of Washington, that the foregoing is true and correct.

19 DATED this 28 day of April, 1993.

20  
21   
22 DAVID BAKER  
23 Legal Counsel for CENEX AG, Inc.  
24  
25  
26

## HYLEBOS WATERWAY DE MINIMIS PRPs

## DECLARATION OF THOMAS ROBERTS

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF PIERCE )

1.0 I, Thomas Roberts, affirm that the following statements are based on my personal knowledge and that I am competent to testify to the matters stated herein.

2.0 I am the President of AOL Express, Inc. and have management responsibility for AOL Express, Inc. This Declaration is submitted to the Environmental Protection Agency in my official capacity, and on behalf of AOL Express, Inc., to demonstrate facts qualifying AOL Express, Inc. for a de minimis settlement in the above-noted matter.

3.0 AOL Express, Inc. is located at the intersection of Taylor Way and Lincoln Avenue, and is within the operative unit identified as the Mouth of the Hylebos within the Commencement Bay Nearshore/Tideflats Superfund Site.

4.0 The Washington Department of Ecology has determined that AOL Express, Inc. is not a confirmed source for contaminants in soil, sediment, groundwater or surface water of the Hylebos Waterway. Following exhaustive environmental investigations,

DECLARATION OF  
THOMAS ROBERTS - 1

SEA2-12437.1 15918 0001

AOL Express, Inc. has discovered no evidence that it has caused or is a pathway for contaminants of concern located within the Hylebos Waterway. The hazardous substances contributed by AOL Express, Inc. to the Hylebos Waterway, if any at all, are minimal in amount and toxicity. It is my belief based on these facts that a de minimis settlement between the Environmental Protection Agency and AOL Express, Inc. is practicable and in the public interest and represents a fair and reasonable allocation of the expected burdens.

5.0 The particular facts supporting this Declaration are contained in two letters, together with their incorporated references, previously submitted to:

- \* Ms. Allison Hiltner, Remedial Project Manager, Hylebos Waterway, U.S. Environmental Protection Agency, Region 10 (HW-113), 1200 Sixth Avenue, Seattle, Washington 98101, on November 4, 1992.
- \* Ms. Allison Hiltner, Remedial Project Manager, Hylebos Waterway, U.S. Environmental Protection Agency, Region 10 (HW-113), 1200 Sixth Avenue, Seattle, Washington 98101, on November 11, 1992.

A true and complete copy of each letter, but excluding their voluminous attachments, is attached to this Declaration and is incorporated by reference as though set forth in full.


6.0 The evidence of record is that AOL Express, Inc. has never contributed nor is a pathway for contaminants of concern



to the Hylebos Waterway. In addition, AOL Express, Inc. does not engage in activities which would cause or contribute to contamination in the Hylebos Waterway of the type of concern to the Environmental Protection Agency. If any such contamination has been contributed to the Hylebos Waterway by AOL Express, Inc., those amounts are minimal in amount and toxicity.

7.0 I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23<sup>rd</sup> day of April, 1993.



THOMAS ROBERTS, President  
AOL Express, Inc.  
4503 - 15th Street East  
Rife, WA 98424

C

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November 4, 1992

**HAND-DELIVERED**

Ms. Allison Hiltner  
Remedial Project Manager  
U.S. EPA Region 10 (HW-113)  
1200 Sixth Avenue  
Seattle, Washington 98101

Re: Commencement Bay Nearshore - Tide Flats  
Superfund Site; AOL Express, Inc.  
Response to EPA Information Request

Dear Ms. Hiltner:

Reference is made to your supplemental information request letter of September 15, 1992, addressed to Tom W. Roberts at AOL Express, Inc. ("AOL Express"), which letter was received by Mr. Roberts on or about September 21, 1992. This response is submitted on behalf of AOL Express pursuant to that information request and in accordance with the extension of time granted to AOL Express by you on October 21, 1992. The following response has been prepared by Michael Moxness, general counsel for Carr-Gottstein Foods Company, and the undersigned. AOL Express is an Alaska corporation wholly owned by Carr-Gottstein Foods Company.

In addition to the following supplemental response, AOL Express has prepared and will submit a request for dismissal of AOL Express as a potentially responsible party or, in the alternative, for entry into a de minimis settlement agreement with AOL Express. All known evidence indicates that AOL Express is uniquely situated in the Commencement Bay Near Shore Tideflats (CB/NT) site and is an appropriate party for dismissal under Congressional directives and statutory criteria.

1. Background Information and Exhibits

On June 27, 1989 AOL Express responded to your agency's first information request. A copy of that response, excluding its attachments, is enclosed for your convenience and incorporated in this supplemental response as Exhibit A. Additional historical data, previously provided to EPA, is also included for your convenience. Exhibit B is the Phase I Site Assessment for the AOL Express site prepared by Dames & Moore on April 24, 1990. Exhibit C is the Phase II Site Assessment for the AOL Express site prepared by Dames & Moore on July 26, 1990. Exhibit D is a site survey of the AOL Express site prepared for

Allison Hiltner  
November 4, 1992  
Page 2

Carr-Gottstein Properties, Inc., File No. 139-13, dated September, 1990. Exhibit E is a soil sampling report for the AOL Express site prepared by Dames & Moore and dated August 23, 1991. Exhibit F is a letter dated July 8, 1992 prepared by Dames & Moore discussing stormwater drainage at the AOL Express site.

The environmental reports prepared by Dames & Moore for the AOL Express site contain a thorough review of soil and groundwater conditions, geographic maps, interviews of current and previous owners and employees, and relevant records concerning the CB/NT. Dames & Moore has continuously concluded in those documents that there is no evidence of spillage on or contamination of the AOL Express site, with one very minor exception. See Exhibit E. Dames & Moore has continuously concluded that AOL Express' grocery operations have not in the past and could not in the future play any part in contamination of the Hylebos or Blair waterways.

AOL Express has acted in a forthright manner to assess its potential responsibility after receiving EPA's notice of potentially responsible party status. Having done so, and in light of the existing evidence, it is appropriate for EPA to exercise its administrative discretion, consistent with legislative mandates for efficient and cost-effective resolution of de minimis party status, and acknowledge that AOL Express has been inappropriately named as a potentially responsible party.

## 2. Response to September 15, 1992 EPA Information Request

The following responses again confirm the lack of any evidence that AOL Express has contributed contamination to the CB/NT. AOL Express reserves the right to supplement these answers as additional evidence or information becomes known or available.

### Question No. 1

The complete history of ownership and lease transactions related to the listed parcels and facility is presented the June 27, 1989 response to EPA's initial information request, attached and incorporated as Exhibit A. In particular, please note Answer No. 3, Answer No. 4 and Answer No. 13.

As to both listed parcels, AOL Express was owner and tenant from November 15, 1982 through August 1, 1983. AOL Express was tenant from August 1, 1983 through July 14, 1988, and

Allison Hiltner  
November 4, 1992  
Page 3

was again owner and tenant from July 14, 1988 to the present. As to the listed facility, AOL Express was operator from November 15, 1982 to the present.

Question No. 2

See the Answer to Question No. 1, above.

This information was previously provided to the EPA in the June 27, 1989 response to EPA's initial information request, attached and incorporated as Exhibit A. Please reference that document and note especially Answer No. 1, Answer No. 3, Answer No. 4, Answer No. 13, and Answer Nos. 17 through 19.

Question No. 3

See the Answer to Question No. 1, above.

As to copies of the specific documents requested, please see the title insurance report and its attached documents referenced in Answer 1 of the June 27, 1989 response, attached and incorporated as Exhibit A.

Question No. 4

See the Answer to Question No. 1, above.

AOL Express leased the property from Gateway Consolidators, Inc. from August 5, 1983 to July 14, 1988, at which time the two companies merged, with AOL Express as the surviving entity. There were no lease documents created to evidence this transaction.

Since November of 1983, AOL Express has leased warehouse space on the property to Carr-Gottstein Foods Company, successor-in-interest to Carr-Gottstein, Inc., successor-in-interest to J.B. Gottstein & Company, Inc. There are no lease documents evidencing this transaction because the companies are interrelated.

Question No. 5

See the June 27, 1989 response to EPA's initial information request, attached and incorporated as Exhibit A, particularly Answer No. 6 and Answer No. 15.

Allison Hiltner  
November 4, 1992  
Page 4

Additional information on stormwater flow, both textual and illustrative, will be found in Part 5.0, Geological and Hydrologic Conditions, Part 6.0, Findings, and Part 7.0, Conclusions, of the Phase II Site Assessment attached and incorporated as Exhibit C. In addition, the site survey, attached and incorporated as Exhibit D, illustrates the location of storm drainage facilities. Note in particular the symbology for storm manholes, catch basins, yard drains and sanitary sewer manholes.

The matter of stormwater flow was further investigated by Dames & Moore, who detailed their findings in a letter dated July 8, 1992 attached and incorporated as Exhibit F. In addition to this information, it has been determined recently that a small, 2-inch emergency pump occasionally evacuates excess stormwater from the on-site depression. It is believed but unconfirmed that this flow is directed to the Lincoln Avenue ditch.

Question No. 6

See the answer to Question No. 5, above.

Question No. 7

See the answer to Question No. 5, above. As to information requested in section 7.f, see the August 23, 1991 soil sampling report, attached and incorporated as Exhibit E.

Question No. 8

See the answer to Question No. 5, above.

Question No. 9

See the Answer to Question No. 5 and Question No. 7, above. In addition, see Part 7.0, Conclusions, of the Phase I Site Assessment, attached and incorporated as Exhibit B.

Question No. 10

AOL Express believes that it has previously provided to EPA copies of all relevant records in its possession that relate to Questions 1 through 9. Some of these records, and additional records responsive to this supplemental request, are enclosed as Exhibits A through F to this response.

Allison Hiltner  
November 4, 1992  
Page 5

Question No. 11

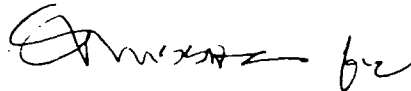
Please reference the entities identified throughout the June 27, 1989 response to EPA's initial information request, attached and incorporated as Exhibit A. Those entities, including the Dames & Moore consultants who prepared the reports identified in this response, may have knowledge relating to these questions.

3. Conclusion

As a result of these studies and the conclusions reached by Dames & Moore, EPA was requested by this office on December 10, 1990, January 9, 1991 and March 4, 1991 to acknowledge that AOL Express should not be a potentially responsible party and that AOL Express should be dismissed from these proceedings. AOL Express again takes this opportunity to reiterate that the geoscience and engineering evaluations identified above, coupled with the fact that AOL Express' grocery warehouse operations could not contribute either historically or prospectively to contamination of the Hylebos or Blair waterways, mandates that EPA expeditiously release AOL Express from its ongoing investigation and from its status as a potentially responsible party.

Accordingly, AOL Express respectfully requests that EPA dismiss AOL Express as a potentially responsible party or, in the alternative, enter into negotiations with AOL Express for a de minimis settlement.

Sincerely,



Jerome L. Rubin  
Scott M. Missall

Enclosures

cc: Michael Moxness  
AOL Express, Inc.

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SUPERFUND REMEDIAL BRANCH

November 11, 1992

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NOV 12 1992  
OFFICE OF REGIONAL COUNSEL  
EPA - REGION X

Ms. Allison Hiltner  
Remedial Project Manager  
Hylebos Waterway  
U.S. Environmental Protection Agency  
Region 10 (HW-113)  
1200 Sixth Avenue  
Seattle, Washington 98101

Re: Request by AOL Express, Inc. for  
Dismissal or De Minimis Settlement

Dear Ms. Hiltner:

We represent AOL Express, Inc. (AOL) regarding the above-entitled matter. We are submitting this information package to you as a consequence of Ms. Rushin's September 15, 1992 Information Request Letter. This information package is intended to update the Environmental Protection Agency (EPA) about the status of AOL's site and summarize several environmental analyses performed by AOL. Those investigations, previously submitted to EPA and the Washington Department of Ecology (Ecology), concluded that there is no evidence of contamination of AOL's site and no evidence of contribution by AOL to off-site pollution. Accordingly, AOL is seeking at the earliest opportunity to be dismissed as a PRP or enter into a de minimis settlement agreement with EPA.

Following your review of this information, we would like to meet with you and Mr. McAllister about resolving this matter.

1. BACKGROUND INFORMATION

The Commencement Bay/Nearshore Tideflats (CB/NT) site was designated by EPA as two separate NPL sites on September 8, 1983. EPA and Ecology agreed on April 13, 1983 to conduct a cooperative cleanup of the CB/NT site. Ecology was designated the lead agency for the upland source investigation. The cleanup is being conducted by EPA under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The CB/NT remedial investigation (RI) was completed in August, 1985. The CB/NT feasibility study (FS) was completed in December, 1988, and a record of decision (ROD) was issued by EPA in September, 1989.

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Potentially responsible party (PRP) notice letters were sent by EPA to 133 entities on or about April 24, 1989. AOL's predecessor in interest, Gateway Consolidators, Inc., received and responded to one of those notice letters. Supplemental Information Request Letters were distributed in September 1992. AOL received its letter on September 21, 1992, and submitted its response on November 4, 1992.

## 2. AOL SITE INFORMATION

The AOL site is located at 2000 Taylor Way, Tacoma, at the intersection of Taylor Way and Lincoln Avenue within the CB/NT boundaries. AOL owns approximately twelve acres located between the Hylebos and Blair Waterways, approximately within Segments 3 and 4 associated with the Hylebos Waterway.<sup>1</sup> None of AOL's property has waterfront access. The AOL site, like most of Commencement Bay, is zoned for heavy industrial uses.

AOL has operated at its present location since August, 1983, when it first leased the property from Gateway Consolidators, Inc. In July, 1988, Gateway Consolidators was merged into AOL and AOL became the property owner. AOL's business involves the transshipment of groceries, household products and clothing to Alaska. Prepackaged products are transported to AOL's warehouse facility for short-term storage before transshipment to Alaska. Accordingly, the principal industrial activity at the site is truck delivery and pickup of dry goods and groceries. No industrial, manufacturing or other production activities occur at the AOL facility.

## 3. AOL PHASE I AUDIT RESULTS

Upon receiving EPA's initial PRP notification letter and submitting its response on June 27, 1989, AOL engaged Dames & Moore as its environmental consultant. Dames & Moore performed a Phase I environmental site assessment of the AOL site and issued a report on April 24, 1990. A copy was provided to EPA. No evidence of spillage on or contamination of the AOL site was discovered, although a subsurface investigation was recommended to determine the potential for migration of contaminated groundwater onto the AOL site from surrounding properties.

---

<sup>1</sup> Segments 1, 2 and 5 were designated high priority by the RI due to prevalent concentrations of chlorinated hydrocarbons. Segments 3 and 4 were designated as secondary priority only because of isolated "hot spots."



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Page 3

A review of EPA, RCRA, CERCLA and Ecology databases disclosed no reference to AOL. Significantly, the 1989 CB/NT ROD did not identify AOL as a known or suspected contributor of contamination to the Hylebos or Blair Waterways.

#### 4. AOL PHASE II AUDIT RESULTS

Dames & Moore performed a Phase II environmental site assessment during the late spring and early summer of 1990 and issued a report detailing its findings and conclusions on July 26, 1990. A copy was provided to EPA. The Phase II assessment was designed to address issues arising from the designation of the CB/NT as a CERCLA site and was executed to comply with CERCLA RI procedures. The primary CB/NT goals of contaminant source control and sedimentation cleanup comprised part of the analytical framework of the Phase II assessment.

The pertinent findings of AOL's Phase II investigation are summarized as follows:

- \* Groundwater and soil conditions at the AOL site do not exhibit indications of contamination related to the EPA Target Compound List as identified in the CB/NT RI. There is no apparent evidence of site contamination falling under the purview of CERCLA.
- \* Groundwater sampling wells installed throughout the AOL site reveal that groundwater meets or exceeds federal safe drinking water standards. Chemical occurrences in the groundwater are below all of EPA's established maximum contaminant levels.
- \* Soil samples taken throughout the AOL site reveal that soils are generally free of chemical contamination and are within all EPA standards. All chemical occurrences in the soil are below EPA's maximum contaminant levels.
- \* Surface drainage from the AOL site flows to one or more established storm sewer inlets. The onsite stormsewer system connects to the City storm sewer system at the intersection of Taylor Way and Lincoln Avenue, which in turn flows to the Hylebos Waterway.

Ms. Allison Hiltner  
November 11, 1992  
Page 4

- \* Surface flow onto the AOL site is from the south/southwest.

5. AOL SOIL CONTAMINATION INVESTIGATION.

On May 14, 1991, during routine testing by Ecology of the Hylebos Waterway storm sewer system, low levels of PCBs were identified in a sediment sample taken from a stormwater sump serving the AOL site. Dames & Moore collected a split sediment sample from the stormwater catchbasin at that time. Laboratory analysis of the Dames & Moore sample indicated the presence of polychlorinated biphenols (PCBs) at a level of 1.6 mg/kg, only slightly in excess of the Washington Model Toxics Control Act (MTCA) Method A cleanup guidelines of 1.0 mg/kg, and well below the MTCA guidelines of 10.0 mg/kg for industrial sites. See WAC 173-340-740 and 173-340-745.

Based on that information, Dames & Moore collected eight discreet soil samples at locations spanning AOL's parking area. Laboratory analysis of those samples revealed that all detections of PCBs were below the Method B cleanup standard for industrial sites, with only two exceeding MTCA Method A cleanup levels. A report detailing these findings was presented to Ecology on August 23, 1991, and subsequently submitted to EPA.

6. PCB FACILITY CONTAMINATION INVESTIGATION

On February 25, 1992 Dames & Moore reported on its investigation into PCB contamination of AOL's warehouse structures. Surface wipe samples taken throughout the buildings revealed no detectable PCBs. The lower limit of detection for those tests was 1.0 ug/100 cm<sup>2</sup>. The level of "no additional risk" for working surfaces has been previously defined as 100 ug/100 cm<sup>2</sup>.

Air samples taken throughout the warehouse building revealed an airborne PCB concentration of less than 1.1 to 1.7 ug/m<sup>3</sup>, which is the lower limit of detection. The Washington Industrial Safety and Health Act permissible exposure limit for airborne PCBs is 500 ug/m<sup>3</sup>.

Ms. Allison Hiltner  
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Page 5

7. SUMMARY OF CERCLA CONTAMINATION

No environmental contamination within the purview of CERCLA has been detected at the AOL site with the exception of the minimal PCB readings discussed above. Since these readings are below the applicable state cleanup standards, there is no evidentiary basis to continue listing AOL as a PRP. Accordingly, AOL is entitled to dismissal as a PRP. In the alternative, pursuant to OSWER Directive 9834.7-1B, Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements (December 20, 1989), AOL is an appropriate candidate for de minimis settlement in the CB/NT NPL superfund site. These conclusions are predicated on the following reasons:

- \* The lack of environmental contamination at the site.
- \* The lack of contamination-producing or hazardous substance-producing activities performed by AOL.
- \* The absence of any evidence that AOL is or has contributed to any off-site contamination.

An analysis of the de minimis settlement criteria outlined in the referenced guidance document, as they relate to the factual information known about the AOL site, is presented below. Based on this analysis, it is appropriate for EPA to acknowledge AOL as a de minimis PRP.

8. ANALYSIS AND APPLICATION OF DE MINIMIS GUIDANCE CRITERIA

A. Definition of De Minimis Settlement Party.

Section 122(g) of CERCLA defines de minimis settlement party as:

A potentially responsible party who satisfies requirements for liability under Section 107(a) of CERCLA and who does not have a valid Section 107(b) defense, but who has made only a minimal contribution (by amount and toxicity) in comparison to other hazardous substances at the site. [This definition was adopted in OSWER Directive No. 9834.7-1B cited above (hereinafter De Minimis Settlement Guidance)].

Ms. Allison Hiltner  
November 11, 1992  
Page 6

AOL is a potentially responsible party under CERCLA Section 107(a) only because AOL is the present owner of a site located within the CB/NT superfund area. Contamination of the AOL site is below federally established maximum contaminant levels and below applicable state cleanup standards. The findings and conclusions of the environmental reports discussed above, together with the type and nature of AOL's business, indicate that no off-site contamination has been or could be caused by or contributed from the AOL site. One potential pathway for off-site contamination, the stormwater drain, exhibited a PCB level below the applicable and relevant MTCA cleanup standard. There is no environmental evidence beyond this that AOL has made any contribution to off-site contamination.<sup>2</sup>

B. AOL Meets the De Minimis Settlement Criteria.

The De Minimis Settlement Guidance identifies several criteria to evaluate whether PRPs qualify for de minimis settlement status. A review of those criteria, in light of the background information discussed above, indicates that AOL is a proper candidate for de minimis settlement.

(1) Only Minor Response Costs are Involved.

Although CB/NT cleanup costs are estimated by the EPA at approximately thirty million dollars, there is no evidence that AOL has contributed to CB/NT contamination. Accordingly, AOL cannot have contributed to EPA response costs.

(2) Minimal Contamination Contribution by Amount.

AOL performs no manufacturing or industrial activity that could cause contamination of the AOL site or off-site locations. There is no evidence that AOL has or is contributing any pollutants or other contaminants to off-site locations. AOL meets the MTCA Method B cleanup level for industrial sites. Thus, AOL cannot have contributed contamination to the CB/NT.

---

<sup>2</sup> Hazardous substances in the CB/NT tend to be composed of heavy metals and organic compounds, including PCBs. The CB/NT ROD indicates that contaminants of major concern in the Hylebos and Alki Waterways are chlorinated organics. The levels of PCBs detected at the AOL site are insufficient to have contributed to off-site PCB contamination.

Ms. Allison Hiltner  
November 11, 1992  
Page 7

(3) Minimal Contamination Contribution by Toxicity.

For the same reasons outlined immediately above, there is no evidence that AOL has or is contributing toxic pollutants or other contaminants to the CB/NT.

(4) De Minimis Settlement is Practicable and in the Public Interest.

The CB/NT Superfund team has had remarkable success in obtaining consent decrees and settlement agreements with major PRPs. Every indicator suggests this process will continue and that a complete CB/NT cleanup will be achieved by EPA in conjunction with the major PRPs. A de minimis settlement with AOL will have no impact on the ongoing CB/NT cleanup effort and will have no effect on further settlements with other PRPs because AOL bears no responsibility for CB/NT contamination.

Congress has recently indicated its desire that EPA accelerate the process of settling with de minimis parties. Congress has determined that such activity is in the public interest and will benefit the public at large and EPA in particular. EPA should heed that legislative directive. There is no practical or public interest reason for not granting a dismissal or vigorously pursuing a de minimis settlement with AOL.

C. Other Rationale Supports De Minimis Settlement With AOL.

(1) Contribution Amount.

There is no evidence that AOL has made a volumetric contribution to the CB/NT site. On a purely evidentiary basis, there is no rationale for assessing AOL any settlement fine as a condition of de minimis settlement with EPA. Notwithstanding that, AOL is willing to contribute a sum certain to the CB/NT cleanup effort in exchange for a de minimis settlement. In light of the serious lack of evidence indicating any contribution to off-site contamination, the payment should be designated AOL's full contribution, including any premium amount.

(2) Timing of this De Minimis Settlement is Appropriate.

Because a ROD has been issued for the CB/NT cleanup effort, EPA has the necessary administrative record to completely

Ms. Allison Hiltner  
November 11, 1992  
Page 8

evaluate the cleanup costs of the CB/NT site and the relative contributions of the named PRPs. The De Minimis Settlement Guidance suggests that de minimis settlements are appropriate after the ROD has been issued because of the available information base upon which to make a reasoned decision. AOL supports this concept and suggests that a de minimis settlement at this time is appropriate.

(3) An Administrative Order on Consent is Appropriate.

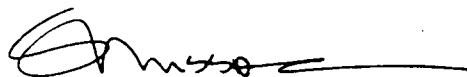
The De Minimis Settlement Guidance suggests that an Administrative Order on Consent is the appropriate vehicle for implementing a de minimis settlement at this time in the cleanup process. AOL supports this procedure and is willing to enter into an Administrative Order on Consent in order to settle its liability to EPA and the other CB/NT PRPs.

9. CONCLUSION

Based on the facts described above, EPA should dismiss AOL as a PRP in the CB/NT. Alternatively based on the application of those facts to EPA's de minimis settlement policies, EPA should engage in de minimis settlement negotiations with AOL. This office is prepared to evaluate and respond to a proposed Administrative Order on Consent as soon as EPA is ready.

Please feel free to contact the undersigned at your earliest convenience should you have any questions about this proposal or the facts outlined above. We are available to meet with you the week of November 23, 1992, and will call shortly to schedule a meeting convenient to you.

Sincerely,



Jerome L. Rubin  
Scott M. Missall

cc: Richard McAllister, Esq.  
Tom Roberts  
Michael Moxness, Esq.

## AFFIDAVIT

F. O. FLETCHER, INC./F. O. F., INC.

I am Peter L. Hirschburg, President of F. O. Fletcher/F. O. F., Inc., and I have been employed by F. O. Fletcher, Inc., since 1948. F. O. Fletcher, Inc., operated the petroleum terminal at 709 Alexander Avenue, Tacoma, Washington, from 1968 to 1978. Prior to those dates, F. O. Fletcher, Inc., was a partner in a partnership that operated the site from 1930 until 1968, the site is now owned by Pacific Resources, Inc. Fletcher had a minority interest in the partnership. To the best of my knowledge, at all times, Fletcher's activity at the site was the storage and distribution of petroleum products, #1 and #2 Diesel.

Management personnel that could provide information as to its activities during the period 1930 to 1970, are all deceased. There are no records available other than sales records, which I have reviewed and which confirm that the facility was operated as a petroleum storage terminal.

It is my understanding that the E.P.A. on February 12, 1993, published a rule to exempt from RCRA Hazardous Waste Requirements, petroleum contaminated media and debris from underground storage tanks. Other rulings also substantiate that petroleum products are not in themselves considered a hazardous waste under current regulations.

Records indicate that the U.S. Air Force operated a sludge disposal site on the property immediately adjoining the former Fletcher property. Following the Air Force activity as a sludge disposal site, we are informed the facility was operated by the U. S. Navy and subsequently by the Port of Tacoma. The State of Washington, Ecology Department, reports that aerial photographs show visual evidence of a concentration of contaminants at that site, and it is a reasonable possibility or a probability that such contaminants could have migrated to the former Fletcher property.

At all times during my knowledge of the site, the U. S. Navy controlled a dock which extends along that portion of the Hylebos Water Way which fronts on Fletcher property. Navy representatives have indicated that this was used as a training and occasionally as a repair site. The vast majority of the usage was by the Navy ships and Fletcher was required to obtain permission from the Navy at any time they wished to use the dock.

In 1978 or 1979, an explosion occurred at the Hooker Chemical Facility, which also adjoins Fletcher property. The tank that exploded was the one nearest to the Fletcher property. It exploded with such force that a recently constructed cement block office building, which was situated on the Fletcher property was totally demolished. In addition, wood frame buildings across the street at a distance of 300 feet were also severely damaged.

There is reason to believe that the contaminants contained in that tank were scattered on Fletcher property, inasmuch as debris covered the entire Fletcher property.



At the time of an insurance settlement with Hooker Chemical, which is now or was then owned by Occidental Petroleum Corp., there were no statutes or ordinances which required contaminated soil to be remediated. As a result, Fletcher had no cause of action against Hooker Chemical to support a demand that it remove the soil, replace tanks and otherwise decontaminate Fletcher property.

Recognizing the real possibility of migration of hazardous chemicals to the Fletcher site, and considering the E.P.A.'s position that petroleum products are not hazardous waste, it is Fletcher's belief that any contamination that may be present on the former Fletcher site was not primarily a result of its activities. As stated above, the former Fletcher site was used primarily for the storage of #1 and #2 diesel fuel, which was delivered by barge, and stored in tanks on the Fletcher property.

The former Fletcher site also had an office building and a loading rack for transport trucks to come onto the Fletcher property and load diesel fuel for distribution to other storage facilities.

From time to time Fletcher leased from the Port of Tacoma, tanks which had been previously used by the Air Force and the Navy, also for the storage of petroleum products. To the best of my knowledge, at no time did Fletcher permit toxic chemicals to contaminate the property.

To the best of my knowledge there was no storm water contamination via a discharge. Fletcher has no current knowledge where storm water may end up at the site.

Taking notice of statements made herein, it is Fletcher's contention that it was a non-substantial contributor to any contamination that may exist at the site.

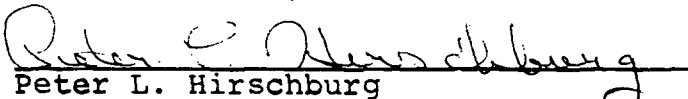
F. O. Fletcher, Inc., is an employee owned corporation. Its assets consist primarily of service station sites. Its cash position is minimal, and the ability to borrow against assets which have been operated as service stations with underground storage tanks, is very restricted, if not almost impossible at this time.

Fletcher lacks the ability to readily make payments in excess of the proposed minimum amounts.

All the statements contained herein are true to the best of my knowledge and are based primarily on my review of records and upon discussions with former managers. I have never officed at the site nor was I ever a resident in the Seattle-Tacoma area.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of April, 1993.

F. O. FLETCHER, INC.

  
Peter L. Hirschburg  
President

STATE OF IDAHO           )  
                                  )  
COUNTY OF ADA           )

On this 20th day of April, 1993, before me the undersigned Notary Public in and for said County and State, personally appeared Peter L. Hirschburg known to me to be the President of the corporation that executed the within instrument or the person who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNISS WHEREOF, I have hereunto set my had and affixed my official seal the day and year in this certifiecate first above written.

*Catherine M. Ayers*  
Notary Public for Idaho  
Residing at: *Boise, Idaho*  
Commission Expires: *May 6, 1998*

1  
2  
3  
4  
5  
6  
7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
8 REGION X

9 IN THE MATTER OF:

10 Commencement Bay Nearshore/	)	
11 Tideflats Superfund Site/	)	U.S. EPA
12 SEDIMENTS OF HEAD AND MOUTH OF THE	)	Docket No.
13 HYLEBOS WATERWAY Tacoma, Pierce	)	
14 County, Washington Proceeding	)	Affidavit of Michael A.
15 under Section 122(g)(4) of the	)	Tucci on behalf of
Comprehensive Environmental	)	Mintercreek Development,
Response, Compensation, and	)	a Washington General
Liability Act of 1980, as amended,	)	Partnership RE: De
42 U.S.C. 9622(g)(4)	)	Minimis Settlement
	)	

16 Michael A. Tucci, being first duly sworn upon oath, deposes  
17 and states as follows:

18 I make this affidavit of my own knowledge and I am competent  
19 to testify to the matters stated herein.

20 I am Michael A. Tucci, general partner in Mintercreek  
21 Development, a Washington General Partnership ("Mintercreek").

22 I submit this affidavit on behalf of Mintercreek.  
23 Mintercreek is the owner and Lessor of approximately one acre of  
24 property in the vicinity of the Hylebos Waterway. Mintercreek has  
25 been named as a Potentially Responsible Party (PRP) for the  
26

**Christopher M. Huss**  
ATTORNEY AT LAW

4224 WALLER ROAD  
TACOMA, WA 98443-1623  
(206) 922-6676

1 Environmental Protection Agency's (EPA) proposed Superfund clean  
2 up of the Hylebos Waterway.

3 This affidavit is submitted to qualify for a de minimis  
4 settlement. The hazardous substances, if any, contributed by  
5 Mintercreek or under their liability have been minimal in amount  
6 and toxicity, relative to the contributions of other parties.  
7 Furthermore, it is possible that the users of this property never  
8 contributed to the Hylebos contamination. It is my further belief  
9 that a de minimis settlement is practicable and in the public  
10 interest and represents a fair allocation of the expected burdens.

11 The property of concern indicated in the Comprehensive List  
12 of Potentially Responsible Parties for the Commencement Bay  
13 Nearshore/Tideland Superfund Site - General Notice Letter dated  
14 April 26, 1989 is located at 4102 E. 11th, Tacoma, Washington.  
15 The property of concern is also indicated in the commencement Bay  
16 Nearshore/Tideflats - Mouth of the Hylebos Waterways - Source  
17 Control Status Report: Milestone 1 dated May 1992 as Pacific  
18 Marine Repair, the current operator of the site. Mintercreek  
19 currently owns the property and leases to Pacific Marine Repair.  
20 Neither Mintercreek nor its principals have ever operated a  
21 business from the property.

22 The subject property is bordered to the north by 11th Street  
23 East, to the west by Sound Refining, Inc., to the east and south  
24 by Airo Services and Banyan Rail Services.  
25  
26

**Christopher M. Huss**  
ATTORNEY AT LAW

4224 WALLER ROAD  
TACOMA, WA 98443-1623  
(206) 922-6678

1 Mintercreek has owned the subject property since September 7,  
2 1983. It is Mintercreek's assertion that if any contamination  
3 occurred on this property, it is the responsibility of the party  
4 causing such contamination, and Mintercreek, although potentially  
5 liable as owner, neither contributed to said contamination nor  
6 possesses any evidence that such contamination has occurred.  
7

8 To Mintercreek's knowledge, no problem chemicals have been  
9 identified as used on site, although it is possible that some  
10 problem chemicals existed on the property. A report on the  
11 property was completed by the Department of Ecology (DOE) in 1988  
12 as a result of the discovery of two derelict barrels with traces  
13 of acetone. Following the drums being removed under the  
14 supervision of the DOE, no further or additional contamination has  
15 been found on site.

16 The Milestone 1 Report dated May 1992, describe the site as  
17 not containing problem chemicals and utilizing Better Management  
18 Practices (BMP). The site was released from List 2 as a probable  
19 site and was not included on List 3.

20 During its occupancy of the property since 1988, Pacific  
21 Marine Repair has properly handled the limited amount of hazardous  
22 wastes utilized in its operations. A City of Tacoma Utility  
23 Services inspection conducted on March 9, 1993, concluded that the  
24 company's handling of potential contaminants was proper and did  
25 not appear to present a threat to the City's storm sewer system  
26 through an inadvertant discharge or spill. Accordingly, the City

**CHRISTOPHER M. HUSS**  
ATTORNEY AT LAW

4224 WALLER ROAD  
TACOMA, WA 98443-1623  
(206) 922-6676

1 concluded that the operation did not require a discharge permit or  
2 monitoring. The foregoing is set forth in an inspection report  
3 and letter from the City of Tacoma dated March 11, 1993.

4 Other than the tests taken during the small DOE remediation  
5 operation, the Milestone studies, and the City of Tacoma  
6 inspection, no other tests or studies have been completed on the  
7 property to the best of my knowledge. None of those tests analyze  
8 the historical contamination within the Hylebos. No evidence has  
9 been presented and Mintercreek is unaware of any evidence which  
10 would demonstrate that contaminants in the Hylebos were  
11 contributed by operations upon this property.

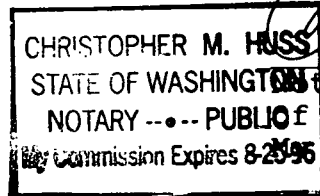
12 Based on all relevant information, contamination of the  
13 Hylebos from this property is minimal, if any.

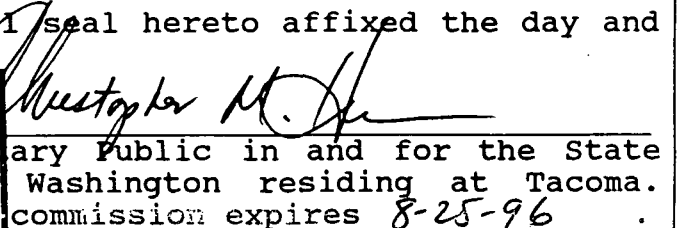
14   
15 Michael A. Tucci

16 STATE OF WASHINGTON )  
17 ) ss.  
18 COUNTY OF PIERCE )  
19

20 On this 23rd day of April, 1993, before me, the undersigned,  
21 a Notary Public in and for the State of Washington, duly  
22 commissioned and sworn, personally appeared Michael A. Tucci,  
23 personally known to me to be a general partner of Mintercreek  
24 Development, who executed the foregoing instrument as his free and  
25 voluntary act and deed.

26 Witness my hand and official seal hereto affixed the day and  
year first above written.



29   
30 Christopher M. Huss  
31 Notary Public in and for the State  
32 of Washington residing at Tacoma.  
33 My commission expires 8-25-96

# AFFIDAVIT

I am Kevin Stigile, a licensed professional Civil Engineer in the State of California, and the Environmental Operations Branch Manager at the Department of the Navy Engineering Field Activity, Silverdale, WA.

I submit this affidavit on behalf of the Navy and Marine Corps Reserve Center, Tacoma, WA. The information contained herein is based upon a records search and report completed in November, 1989 by the Naval Energy and Environmental Support Activity (NEESA), Pt. Hueneme, California. The NEESA report was provided to EPA in response to EPA's General Notice letter dated May 11, 1989 which informed the Navy and Marine Corps Reserve Center of its status as a potentially responsible party (PRP).

The Navy and Marine Corps Reserve Center occupies approximately 9.03 acres located at 1100 Alexander Avenue, Tacoma, Washington 98421. The Reserve Center operates administrative facilities, shops, and a pier facility for training purposes.

This affidavit is submitted to qualify for a de minimis settlement. To the extent that the Navy and Marine Corps Reserve Center contributed any hazardous substances to the contamination in the Hylebos Waterway, such contributions were minimal in amount and toxicity, relative to the contributions of other parties. It is my belief that a de minimis settlement is practicable and in the public interest and represents a fair allocation of the expected burdens.

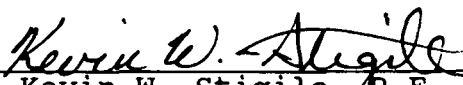
The property of concern indicated in the Comprehensive List of Potentially Responsible Parties for the Commencement Bay Nearshore/Tideland Superfund Site is the Navy and Marine Corps Reserve Center, 1100 Alexander Avenue, Tacoma, WA. The Reserve Center has been in operation at that site since the late 1940s. The property was acquired in fee from Evelyn Clapp in 1943.

According to the NEESA report, the Reserve Center maintained an EPA generator number which has been used to dispose of hazardous waste generated by the Reserve Center and the Naval Reserve Maintenance Training Facility which was a tenant activity at the Reserve Center site from 1982-1988. Typical wastes generated by painting and minor repairs include oils, fuels, solvents, paints, and batteries. When the Reserve Maintenance Training Facility was moved to Bremerton in 1988, waste generation rates at the Reserve Center site dropped from 2000 to fewer than 100 gallons per year. Compounds identified on waste manifests include tetrachloroethylene, mineral spirits, paint, xylene, basic alkyd, and waste sodium phosphate tribase. None of these



compounds are listed as identified contaminants in the Mouth of Hylebos Problem Area. Additionally, there is no record of any spills or other releases of CERCLA hazardous substances in excess of reportable quantities at the Reserve Center site since 1976 when annual reports of such incidents were first compiled.

Finally, in a June 5, 1992 letter to EPA Region X, the Washington State Department of Ecology forwarded the Milestone 1 Report for the Mouth of Hylebos Waterway Problem Area. This report removed the Reserve Center from "List 1" (which included all parties on the Mouth of Hylebos who were issued a General Notice Letter by EPA) of potential ongoing sources of problem chemicals because there were no problem chemicals identified and the site did not appear to be an ongoing source of problem chemicals to the Mouth or Head of Hylebos Waterway.

  
Kevin W. Stigile, P.E.

STATE OF WASHINGTON

COUNTY OF KITSAP

On APRIL 21, 1993, before me, a Notary Public in and for said State, personally appeared KEVIN W. STIGILE, personally known to me to be the SIGNATORY and executed the within instrument.

WITNESS my hand and official seal

  
\_\_\_\_\_

My appointment expires: MAY 1, 1995

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
SEATTLE, WASHINGTON

IN THE MATTER OF:

HYLEBOS WATERWAY OF THE  
COMMENCEMENT BAY NEARSHORE/  
TIDEFLATS SUPERFUND SITE

Proceeding under Section 122(g)  
of the Comprehensive Environmental  
Response, Compensation and  
Liability Act as amended,  
42 U.S.C. § 9622(g)

)  
) U.S. EPA Docket No. \_\_\_\_\_  
)  
)  
) AFFIDAVIT OF LESLIE P.  
) SUSSMAN

STATE OF WASHINGTON )  
) ss.  
County of Pierce )

LESLIE P. SUSSMAN, being first duly sworn upon oath, deposes  
and says:

My address is 1 Stadium Way, #6, Tacoma, Washington 98403.  
This affidavit is submitted in connection with an effort  
supported by me and others to obtain a de minimis settlement of  
liability under the Comprehensive Environmental Response,  
Compensation and Liability Act of 1980 for the Hylebos Waterway  
portion of the Commencement Bay Nearshore/Tideflats site.

I received a general notice letter from EPA dated April 24, 1989 regarding "Commencement Bay Nearshore/Tideflats Superfund Site". That letter informed me that EPA "has determined" that I am a potentially responsible party for the CB/NT site. An attachment to that letter associated my name with the Hylebos Waterway portion of the CB/NT site.

I submitted a response to EPA providing information to EPA as requested in the April 24, 1989 letter. I have also worked with other companies and individuals designated as PRPs for the CB/NT site.

Part of the PRP efforts for the Hylebos Waterway have been to identify PRPs who qualify for an early de minimis settlement.

I believe I qualify. The reasons for my belief are explained in this affidavit.

From the mid-1960s until 1992, my wife and I owned real property situated on the Hylebos Waterway. That property was leased to General Metals of Tacoma, Inc., a Washington corporation. General Metals used the site from the mid-1960s as the location for General Metals' ferrous scrap metal recycling operations. General Metals remains on the site today. General Metals purchased the property from us in 1992.

EPA's April 1989 letter designated me as "owner PRP". The letter indicated that General Metals was the tenant on the property.

To the best of my knowledge, all operations which took place on the site during my ownership were conducted in the name of

General Metals and on behalf of General Metals.

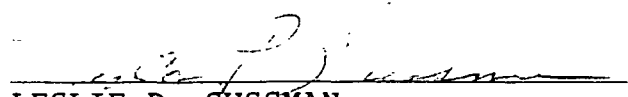
I was an officer in General Metals up to 1981 and owned shares of stock in General Metals up to that time. All operations on the site were conducted by General Metals from the time my wife and I purchased the property through the date of our sale of the property to General Metals. At the time I was involved in General Metals, the company observed all corporate forms and maintained its corporate status in good standing. EPA did not designate me as an officer PRP or operator PRP. No one, to the best of my knowledge, has ever said I am personally responsible for the site in any capacity except owner (now past owner) PRP.

I understand, from research conducted by Ecology, EPA and General Metals, that there were releases of hazardous substances from the General Metals site to the Hylebos Waterway. The information I have about those releases post-dates my involvement as an owner and officer in General Metals. I understand, however, that information concerning releases was collected while we still owned the property and leased it to General Metals.

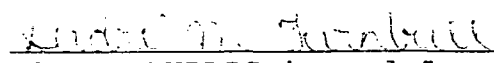
I believe I qualify for an early de minimis settlement because my contribution to the Hylebos Waterway site is minimal relative to the contributions by other parties. Specifically, my role was only as a landowner.

Please consider this response to supplement the written information I provided earlier as a direct response to EPA's

April 24, 1989 letter.

  
LESLIE P. SUSSMAN

SIGNED AND SWORN TO before me on this 22nd day of April, 1993  
by Leslie P. Sussman.

  
NOTARY PUBLIC in and for the State of  
Washington, residing at Tacoma.  
My commission expires: 4-1-95

IN THE MATTER OF:

U.S. EPA  
Docket No.

AFFIDAVIT OF  
HENRY J. BRIST  
FOR VANCE LIFT  
TRUCK, INC.

Affidavit of Vance Lift Truck - 1

1/4 acre site from Norman Nordlund. Vance Lift operates a forklift repair and sales business on the property. Forklifts and other machinery is steam cleaned on a concrete pad. The waste water flows into a oil/water separator. Our used petroleum products have always been picked up by oil recycling companies. Our anti-freeze was, in the past, also picked up by oil recycling companies. Since the change in classification of anti-freeze, we have processed the anti-freeze through state-certified hazardous waste pick-up companies.

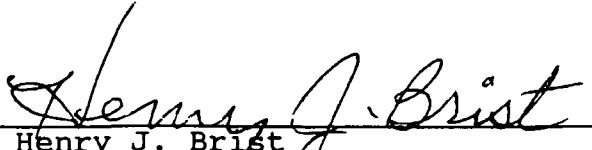
5. The Commencement Bay Nearshore/Tideflats Record of Decision, published in September 1989, identifies several chemicals as indicators of the most severe contamination of the Hylebos waterway sediments ("problem chemicals") and further identifies sources of these chemicals. Vance Lift does not use, generate or store any of the problem chemicals and it is not identified in the ROD as a source of problem chemicals.

6. Moreover, it is my understanding and belief that Vance Lift has no pathway to the Hylebos waterway. The results of a dye test performed by the City of Tacoma have confirmed that the site drains to the Blair waterway.

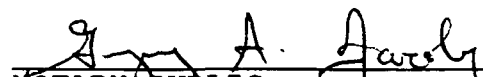
7. Based on the information set forth above, Vance Lift contends that its contribution of contaminants to the Hylebos waterway, if any, is minimal relative to other parties and therefore Vance Lift is a proper party to be considered for a *de minimis* or cash-out settlement.

8. The information contained in this affidavit is correct to

the best of my knowledge and is based upon my review of available files that were reasonably expected to contain information about Vance Lift's use, generation, and disposal of hazardous substances.

  
Henry J. Brist

SIGNED AND SWORN to before me on April 19, 1993, by Henry J. Brist.

  
NOTARY PUBLIC  
My appointment expires: 12-29-96



1  
2  
3 **ENVIRONMENTAL PROTECTION AGENCY**  
4

5 In re: Hylebos Waterway  
6

7 **AFFIDAVIT OF KAREN LARKIN**  
8 **IN SUPPORT OF DE MINIMIS**  
9 **SETTLEMENT**

10 STATE OF WASHINGTON )  
11 ) ss.  
12 COUNTY OF PIERCE )

13 KAREN LARKIN being first duly sworn on oath, deposes and states:

14 I make this affidavit of my own knowledge and I am competent to testify to the  
15 matters stated herein.

16 I am Karen Larkin, a licensed professional civil engineer in the State of  
17 Washington and Division Manager of Utility Services Engineering, a division of the Public  
18 Works Department of the City of Tacoma.

19 I submit this affidavit on behalf of the City of Tacoma's General Government  
20 offices and on behalf of the Storm and Sanitary Sewer Utility of the City of Tacoma.

21 The City of Tacoma General Government operates the City's Fire, Police, Sewer  
22 Utilities, Refuse Utility, Street, Public Works, and other similar basic City services. This  
23 affidavit is not submitted on behalf of the Tacoma Department of Public Utilities with  
24 regard to Utilities properties in the CBN/T boundaries. The Department of Public Utilities  
25 conducts a separate operation and administration of its facilities, staff, and finances from  
26

**AFFIDAVIT OF KAREN LARKIN IN SUPPORT  
OF DE MINIMIS SETTLEMENT - 1**

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CITY ATTORNEY  
TACOMA MUNICIPAL BUILDING  
747 MARKET STREET, ROOM 1120  
TACOMA, WASHINGTON 98402  
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2  
3 that of the General Government. It is my understanding that the Agency has  
4 acknowledged that distinction and has agreed to proceed treating the two entities as  
5 distinct and separate.

6 Utility Services is a branch of the General Governmental services of the City of  
7 Tacoma. Utility Services is charged with the responsibility, among others, with the  
8 control, maintenance and repair of the storm drains of the City of Tacoma.

9 This affidavit is submitted to qualify for a de minimis settlement. The hazardous  
10 substances contributed by the City of Tacoma's storm drains are minimal in amount and  
11 toxicity, relative to the contributions of other parties. It is my further belief that a de  
12 minimis settlement is practicable and in the public interest and represents a fair allocation  
13 of the expected burdens.

14 The properties of concern indicated in the Comprehensive List of Potentially  
15 Responsible Parties for the Commencement Bay Nearshore/Tideland Superfund Site  
16 Operable Unit 01-Sediments (second §104(e) request dated July 26, 1991 (Enclosure B))  
17 for the City of Tacoma within the Hylebos include (1) 1200 Taylor Way and East 11th and  
18 Hylebos Waterway, and (2) the storm drains. The properties of concern include street  
19 rights of way and the storm drains.

20 This affidavit should be considered a supplement to the City of Tacoma's General  
21 Government responses to EPA's April 24, 1989, General Notice Letter and July 26, 1991,  
22 second request.

23 Since responding to the General Notice letter of April 24, 1989, the City of  
24 Tacoma General Government has participated in activities concerning the Hylebos  
25 Waterway. Those activities have included work with other PRP's on a variety of subjects.  
26 The General Government has been active in the Hylebos Group since its inception.

AFFIDAVIT OF KAREN LARKIN IN SUPPORT  
OF DE MINIMIS SETTLEMENT - 2

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**Rights of Way**

The City does not, as a general rule, "own" the property on which its streets are maintained. This generalization may be applied to street rights of way in the Hylebos operable unit.

Where the City operates streets, it generally has acquired the right to do so by dedication of the property to that use by the original owners, usually as a condition of plat approval. This means that the City has the right to the use of the right of way for street and other public purposes, but does not have "ownership" of the ground on which the street lies. This dedicated street right of way is in the nature of an easement for public use. Because the use by the City continues over a long period of time, and because the use of the City is generally exclusive, the City's rights are often confused with "ownership", which is most generally a legal misnomer. This comment is significant in this context because of the legal effects of ownership in the context of CERCLA.

As to the specific properties of concern, both the Lincoln Avenue and East 11th Street rights-of-way were dedicated to Pierce County as rights of way for public use in the late 1800s and early 1900s. This area was annexed by the City of Tacoma in 1927.

Rights-of-way for the Lincoln Avenue and East 11th Street were dedicated to the City of Tacoma for public use. In accordance with city ordinance it is the responsibility of the abutting property owners to maintain the adjacent right-of-way. In addition, if the City were to vacate the right of way, ownership would revert to the abutting property owners.

1  
2 **Storm Drains**

3  
4 Generally, the public storm drain networks serving, or entering, the subject area  
5 are owned and operated by the City of Tacoma, Sewer Utility. The major exceptions are  
6 the Hylebos and Wapato Creek drainage systems which provide drainage to properties in  
7 Fife, Milton, Federal Way, and unincorporated Pierce County. Ownership and  
8 maintenance responsibility of these systems is unknown.

9  
10 The City of Tacoma Storm Drainage System lies either in street right-of-ways or in  
11 easements granted for that purpose by private property owners. Street right-of-ways are  
12 strips of land either deeded or dedicated to the city for the purpose of providing streets  
13 and roads. Easements are strips of land, the owners of which have granted the Sewer  
14 Utility the right to construct, operate, and maintain a sanitary sewer line. The owner  
15 grants no ownership under an easement.

16  
17 In the early 1970's certain streets in the Tide flats area were owned and maintained  
18 by the Port of Tacoma. These included Marine View Drive Extension around the  
19 southeasterly end of Hylebos Waterway and Alexander Avenue southeast of Lincoln  
20 Avenue. The latter may have been given over to the City of Tacoma prior to that time.

21  
22 Much of the existing Tide flats drainage system is the result of a "Diking District"  
23 established late in the 1800's or early 1900's. The drainage system became the  
24 responsibility of the Port of Tacoma after it was formed. Operation and maintenance of  
25 the portion of the system in public right-of-way became the responsibility of the City when  
26 the Storm Drain Utility was formed on April 17, 1979.

The network extends beyond the city limits as noted above.

By necessity the networks extends onto private property by means of private  
drainage systems. Not every property is connected directly to the public drainage system.

1  
2  
3 drainage systems. Not every property is connected directly to the public drainage system.  
4 For example, majority of commercial establishments with parking facilities will have a  
5 private on-site drainage system connected.

6 By ordinance, the city's responsibility ends at the property line. The surface areas  
7 of street rights-of-way were made a part of the public surface water collection system.  
8 The only maintenance the City performs on private property is that required to maintain  
9 natural drainage ways. That is, small streams and/or creeks that provide the function of  
10 public drainage.

11 The only hazardous material that could be construed to be used in conjunction  
12 with the operation and maintenance of the network would be the fuels used to power  
13 maintenance equipment such as trucks, pumps, etc.

#### 14 **Results of the Surface Water Quality Study.**

15 In 1986 the City of Tacoma, in conjunction with the Washington State Department  
16 of Ecology and the Tacoma-Pierce County Health Department (TPCHD) undertook a  
17 study to try to determine the potential sources of pollution in five major drainage basins  
18 discharging to Commencement Bay. Outfalls within each of those basins were selected.  
19 The outfalls included the "twin 96's" at the head of City Waterway, the head of Wheeler-  
20 Osgood Waterway, the 15th and Dock Street outfall, and one of two at the head of  
21 Sitcum Waterway. The Surface Water Quality Study does not address drainage to the  
22 Hylebos Waterway.

23 A draft report was submitted to Ecology and TPCHD for review, comment, and  
24 additions. The final report published January of 1990 indicates no significant on-going  
25 discharges are occurring presently. Although no specific statement is made in the report  
26 regarding the sources of the low levels of pollutants found in the outfall discharge, almost

1  
2 all of them are estimated to come generally from street runoff. That is, from the freeways  
3 and city streets.  
4

5 **Results of the Milestone Reports.**

6 The Department of Ecology issued a Letter Report concerning the Hylebos  
7 Waterway presenting the results of its efforts to identify ongoing sources of contamination  
8 in the mouth of the Hylebos, that area northwest (downstream) of Lincoln Avenue.  
9 CBN/T Mouth of Hylebos Waterway Source Control Status Report Milestone 1, May  
10 1992. A similar report is soon to be released for the remainder of the waterway, the Head  
11 of the Hylebos Waterway.

12 Ecology's source identification and control efforts in conjunction with the Agency's  
13 lead in cleaning up contaminated marine sediments focused on identifying facilities or sites  
14 that might release contaminants and determining whether those facilities or sites are  
15 potential or confirmed ongoing sources of problem chemicals within the problem area.

16 The list of City of Tacoma facilities and sites included in the Letter Report are the  
17 same as those included in EPA's list of Potentially Responsible Parties for the Hylebos  
18 Waterway.

19 The City of Tacoma's storm drains within the Hylebos were "delisted", i.e., they  
20 were removed from List 2 and were not on List 3. List 3 includes all confirmed sources of  
21 contaminants and List 2 includes all probable sources of contaminants.

22 Problem chemicals were identified for both the Mouth and the Head of the  
23 waterway consistent with the Source Control Strategy Commencement Bay  
24 Nearshore/Tidelands Superfund Site March 1992 document. See Attachment A (Problem  
25 Chemicals).  
26

**AFFIDAVIT OF KAREN LARKIN IN SUPPORT  
OF DE MINIMIS SETTLEMENT - 6**

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2 The City of Tacoma storm drains were removed from List 2 as a probable site with  
3 the finding that, "Two major drains sampled. Problem chemicals not identified." (p. 11).  
4 The Appendix explains further, "Sampled - problem chemicals/drains not identified."  
5 (p.17).  
6

7 The storms drains included within the scope of the Mouth of the Hylebos study  
8 were within a drainage basin where the predominant use is industrial/commercial. It is  
9 anticipated that the soon to be released Head of the Hylebos Waterway study will come to  
10 the same conclusion as its counterpart study, in part, because the storms drains drain an  
11 area that is primarily residential/recreational and the identified problem chemicals would  
12 not be expected to be released in that area.

13 The Surface Water Quality Study for the Thea Foss indicates contaminants within  
14 the storm drain system consistent with the findings of the Thea Foss Milestone 1 Report.  
15 However, given the different results found in the Mouth of the Hylebos study and  
16 expected in the Head of the Hylebos study it is reasonable to conclude that a surface water  
17 quality study within the Hylebos drainage would find no problem chemicals.

18 The storm drains are subject to periodic maintenance by Sewer Utility crews. The  
19 maintenance includes, among other things, cleaning catch basins within the storm drain  
20 system. To the extent that any contaminants are introduced into the storm drains, the  
21 catch basins have the mitigating impact of capturing a portion of those contaminants.

22 The Milestone reports, do not and will not address historical contamination within  
23 the Hylebos. However, no evidence has been presented and the City is not aware of any  
24 and does not expect any to be presented that demonstrates contaminants with marine  
25 sediments that were either contributed by or transported by the storm drains.  
26

AFFIDAVIT OF KAREN LARKIN IN SUPPORT  
OF DE MINIMIS SETTLEMENT - 7

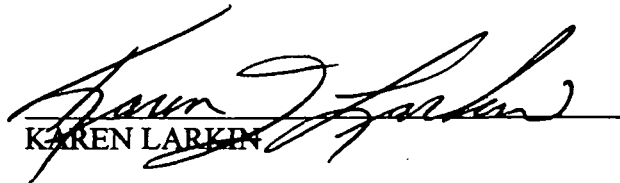
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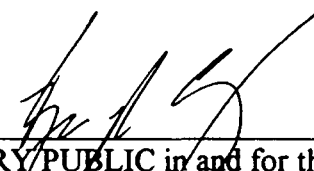
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2 Consequently, as to the rights of way and the storm drains, the contribution of  
3 contaminants from those sources is minimal.

4 Therefore, since this portion of the Waterway has a low priority for cleanup, since  
5 no significant quantities of priority or problem chemicals from the storm drains appear to  
6 be settling in the adjacent waterway, the City of Tacoma General Government feels its  
7 storm drains are a non-substantiated contributor to any sediment problem on the Hylebos  
8 Waterway, and the City has only a very limited responsibility for the cost of remediation.

9 The information contained in this affidavit is correct to the best of my knowledge  
10 and is based upon my review of available files that were reasonably expected to contain  
11 information about the Property.  
12

13  
14   
15 KAREN LARKIN

16  
17 SUBSCRIBED AND SWORN to before me this 16 day of April, 1993.

18  
19   
20 NOTARY PUBLIC in and for the State of  
21 Washington, residing at 3. N. 94  
22 Commission Expires: 5. 01. 94  
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AFFIDAVIT OF KAREN LARKIN IN SUPPORT  
OF DE MINIMIS SETTLEMENT - 8

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
SEATTLE, WASHINGTON

IN THE MATTER OF:	)	
	)	U.S. EPA Docket No. _____
HYLEBOS WATERWAY OF THE	)	
COMMENCEMENT BAY NEARSHORE/	)	
TIDEFLATS SUPERFUND SITE	)	AFFIDAVIT OF DANIEL L.
	)	GOODELL
Proceeding under Section 122(g)	)	
of the Comprehensive Environmental	)	
Response, Compensation and	)	
Liability Act as amended,	)	
42 U.S.C. § 9622(g)	)	
_____	)	

This affidavit is prepared in relation to the request of Jones-Goodell Corporation and J & G Investments, a Washington partnership, along with about 25 other firms and individuals on the Hylebos Waterway, for an early de minimis settlement of CERCLA liability at the Hylebos Waterway.

Jones-Goodell Corporation was listed as a PRP in relation to property at 1690 Marine View Drive, Tacoma, Washington 98422. Jones-Goodell Corporation occupies that site as a lessee. The lessor is J & G Investments. J & G Investments itself does not conduct operations at the site. J & G Investments' address is 4812 East 64th Street, Tacoma, Washington 98443.

J & G Investments also was listed as a PRP. Jones-Goodell Corporation received a letter notifying it of its PRP status dated April 24, 1989. J & G Investments was listed as a PRP but never received the April 24, 1989 letter or any other letter from EPA. Jones-Goodell Corporation responded to EPA's April 24, 1989 letter with a letter of its own dated May 25, 1989.

Jones-Goodell Corporation is a small, family-owned company. The company has occupied its site at 1690 Marine View Drive since 1976. It has occupied that site since the corporation was created.

Jones-Goodell Corporation's business is repair and manufacturing of small vessels. The work has been accomplished in a number of buildings on the site as well as through the use of a marine way and a dock.

Jones-Goodell Corporation generates waste, mainly waste lacquer thinner/toluene/acetone contaminated with paint. These wastes are stored in secure drums, under cover, within a bermed area. These materials are recycled. Any spills or residue from the storage or use of these materials is scraped up, swept up or absorbed in blotter cloths and disposed of through an off-site waste disposal system. Fifty-five gallon drums which contained product, when empty, are retrieved and recycled through Northwest Cooperage.

EPA's April 24, 1989 letter (question 11) asked that Jones-Goodell disclose any spills, leaks or pipeline breaks for hazardous substances or containers. There have been no such

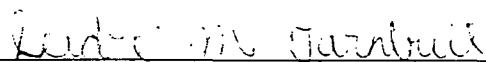
incidents on Jones-Goodell's premises.

Jones-Goodell Corporation should receive an early de minimis settlement of CERCLA liability from EPA. Jones-Goodell has not used the Hylebos Waterway as a waste dumping site. Jones-Goodell always maintained a clean operation and took care not to contaminate the waterway or soil or groundwater on its premises. Jones-Goodell is a small company (between 40-50 employees on the average) and does not have the means to foot a huge bill for cleanup largely created by the actions of others.

J & G Investments also should receive an early de minimis settlement of liability. J & G Investments has been a passive landowner of the 1690 Marine View Drive site since 1976. J & G Investments has had no operations and, thus, has no responsibility for pollutants deposited in the Hylebos Waterway.

  
DANIEL L. GOODELL

SIGNED AND SWORN TO before me on this 30th day of April, 1993 by Daniel L. Goodell.

  
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma.  
My commission expires: 4-1-95